

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEPHEN CHRISTIE,

Petitioner,

Case No. 3:23-cv-00255-ART-CLB

V.

NETHANJAH BREITENBACH,

Respondents.

ORDER

8 On July 21, 2023, this Court granted Petitioner Stephen Christie's motion
9 for appointment of counsel and gave the Federal Public Defender 30 days to (1)
10 undertake direct representation of Petitioner by filing a notice of appearance or
11 (2) indicate the office's inability to represent Petitioner in these proceedings. (ECF
12 No. 13.) On August 17, 2023, the Federal Public Defender filed a notice of
13 appearance. (ECF No. 14.)

14 It is therefore ordered that the Federal Public Defender, through Alicia R.
15 Intrago, Esq., is appointed as counsel for Petitioner Stephen Christie pursuant
16 to 18 U.S.C. § 3006A(a)(2)(B). Counsel will represent Petitioner in all federal
17 proceedings related to this matter, including any appeals or certiorari
18 proceedings, unless allowed to withdraw.

19 It is further ordered that Petitioner shall have up to and including 90 days
20 from entry of this order within which to file an amended petition and/or seek
21 other appropriate relief. Neither the foregoing deadline nor any extension thereof
22 signifies or will signify any implied finding as to the expiration of the federal
23 limitation period and/or of a basis for tolling during the time period
24 established. Petitioner remains responsible for calculating the running of the
25 federal limitation period and timely asserting claims, without regard to any
26 deadlines established or extensions granted herein. That is, by setting a deadline
27 to amend the petition and/or by granting any extension thereof, the Court makes
28 no finding or representation that the petition, any amendments thereto, and/or

1 any claims contained therein are not subject to dismissal as untimely. *See Sossa*
2 *v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

3 It is further ordered that Respondents shall file a response to the amended
4 petition, including potentially by motion to dismiss, within 60 days of service of
5 an amended petition and that Petitioner may file a reply thereto within 30 days
6 of service of the answer. The response and reply time to any motion filed by either
7 party, including a motion filed in lieu of a pleading, shall be governed instead by
8 Local Rule LR 7-2(b).

9 It is further ordered that any procedural defenses raised by Respondents
10 to the counseled amended petition shall be raised together in a single
11 consolidated motion to dismiss. In other words, the Court does not wish to
12 address any procedural defenses raised herein either in seriatum fashion in
13 multiple successive motions to dismiss or embedded in the answer. Procedural
14 defenses omitted from such motion to dismiss will be subject to potential
15 waiver. Respondents shall not file a response in this case that consolidates their
16 procedural defenses, if any, with their response on the merits, except pursuant
17 to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
18 Respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they
19 shall do so within the single motion to dismiss not in the answer; and (b) they
20 shall specifically direct their argument to the standard for dismissal under §
21 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In
22 short, no procedural defenses, including exhaustion, shall be included with the
23 merits in an answer. All procedural defenses, including exhaustion, instead must
24 be raised by motion to dismiss.

25 It is further ordered that, in any answer filed on the merits, Respondents
26 shall specifically cite to and address the applicable state court written decision
27 and state court record materials, if any, regarding each claim within the response
28 as to that claim.

1 It is further ordered that any state court record and related exhibits filed
2 herein by either Petitioner or Respondents shall be filed with a separate index of
3 exhibits identifying the exhibits by number. The CM/ECF attachments that are
4 filed further shall be identified by the number or numbers of the exhibits in the
5 attachment. If the exhibits filed will span more than one ECF number in the
6 record, the first document under each successive ECF number shall be either
7 another copy of the index, a volume cover page, or some other document serving
8 as a filler, so that each exhibit under the ECF number thereafter will be listed
9 under an attachment number (i.e., attachment 1, 2, etc.).

It is further ordered that courtesy copies of exhibits shall not be provided.

DATED THIS 21st day of August 2023.

Anne Russell Bear

ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE